IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs June 27, 2006

STATE OF TENNESSEE v. KRISTIE L. MARTIN

Appeal from the Criminal Court for Sullivan County
Nos. S49,156, S47,671 & S48,991 Lynn Brown & R. Jerry Beck, Judges

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No. E2005-01898-CCA-R3-CD - Filed September 22, 2006

The defendant, Kristie L. Martin, appeals her Sullivan County Criminal Court sentences for criminal impersonation, interference with a security interest, issuing a false financial statement, and identity theft. She claims that the trial court erred in denying her a sentencing alternative to full incarceration. Because the record on appeal lacks a vital component for de novo review, we presume the correctness of the criminal court's judgments, and we affirm.

Tenn. R. App. P. 3; Judgments of the Criminal Court are Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ROBERT W. WEDEMEYER, J., joined.

Thomas McKinney, Jr., Kingsport, Tennessee (at trial); Howard Orfield, Jr., Bristol, Tennessee (at trial); and Whitney P. Taylor, Kingsport, Tennessee (on appeal), for the Appellant, Kristie L. Martin.

Paul G. Summers, Attorney General & Reporter; Renee W. Turner, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and B. Todd Martin, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The defendant pleaded guilty to offenses involving various 2003 financial-related offenses. The guilty pleas as approved by the trial court specified an effective Department of Correction sentence of four years but was "open" as to the manner of service of the sentences. The trial court denied alternative sentencing and ordered the effective sentence served in the Department of Correction.

The 32-year-old defendant testified in the sentencing hearing that she was married and had an eight-month-old daughter and a 13-year-old son. She had lost another son during pregnancy. She was unemployed because of the need to care for her daughter, who was afflicted with eosinophilic gastropathy, which resulted in food allergies and food intolerance. The defendant

testified that she had no family to assist her in caring for the child, except her current husband who works long hours six days a week managing a utility and truck accessory store to support the family. She testified that she held a Bachelor of Science degree in nursing.

The defendant explained that her prior criminal record consisting of numerous convictions emanated from "los[ing] it" after her mother's death when the defendant was 19 years old. She testified, "I got to running around with the wrong crowd. I married this guy and these cases came about . . . ." The defendant remarried during the pendency of her present cases. She expressed her remorse for committing the current conviction offenses and declared her willingness to fulfill any probationary conditions, subject to caring for her daughter.

On cross-examination, the defendant admitted approximately 30 prior misdemeanor convictions, including criminal trespass, shoplifting (twice), failure to appear, theft (at least three times), driving on a revoked license, contempt, passing a worthless check, assault and battery, forgery, uttering a forged instrument (three times), and multiple traffic violations. The defendant admitted that she had been placed on probation a number of times and had re-offended twice while on probation. She admitted that in the past she had been "untruthful" and "manipulative."

The trial court acknowledged its concern for the defendant's infant and the favorable circumstance of the defendant's educational accomplishment. It denied, however, any form of alternative sentencing based upon the defendant's long history of offending and her previous violations of probation.[1]

On appeal, the defendant claims that the trial court should have afforded a sentencing alternative to incarceration.

When a defendant challenges the length, range, or manner of service of a sentence, this court conducts a de novo review of the record with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann.§ 40-35-401(d) (2003). This presumption, however, is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). The burden of showing that the sentence is improper is upon the appellant. *Id.* If the review reflects the trial court properly considered all relevant factors and its findings of fact are adequately supported by the record, this court must affirm the sentence, even if we would have preferred a different result. *State v. Fletcher*, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

In the event the record fails to demonstrate the required consideration by the trial court, appellate review of the sentence is purely de novo. *Ashby*, 823 S.W.2d at 169.

[1] To address concerns about the welfare of the infant, the trial court delayed the date for the defendant's report into custody.

In making its sentencing determination in the present case, the trial court, at the conclusion of the sentencing hearing, was obliged to determine the range of sentence, the specific sentence, and the propriety of sentencing alternatives by considering (1) the evidence, if any, received at the trial and the sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct involved, (5) evidence and information offered by the parties on the enhancement and mitigating factors, (6) any statements the defendant wishes to make in her behalf about sentencing, and (7) the potential for rehabilitation or treatment. Tenn. Code Ann. § 40-35-210(a), (b) (2003); *id.* § 40-35-103(5); *State v. Holland*, 860 S.W.2d 53, 60 (Tenn. Crim. App. 1993).

The defendant, a Range I, standard offender, enjoyed the presumption of favorable candidacy for alternative sentencing for her offenses. *See* Tenn. Code Ann. § 40-35-102(6) (2003). Of course, the presumption of favorable candidacy may be rebutted by statutorily specified circumstances, such as a defendant's history of repeated offending and her prior failure to successfully complete probation. *See id.* § 40-35-103(1) (providing that "sentences involving confinement should be based [upon specific factors, including that c]onfinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct . . . or . . . [m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant").

In the present case, the record on appeal contains neither the transcript of the plea submission hearing nor the presentence report, the components of a record that, in a guilty-plea case, typically reveal the nature and circumstances of the offenses. *See, e.g., State v. Gary Alden Bowers*, No. E2004-00697-CCA-R3-CD, slip op. at 3 (Tenn. Crim. App., Knoxville, Mar. 14, 2005), ("Generally, a transcript of the guilty plea hearing is necessary to conduct an effective appellate review of sentencing because it allows this court to ascertain the facts and circumstances surrounding the offenses."), *perm. app. denied* (Tenn. 2005). As we noted above, our mandated review is de novo upon the record, *see* Tenn. Code Ann. § 40-35-401(d) (2003), and the "nature and characteristics of the criminal conduct involved" are factors that we are obliged to review, *see id.* § 40-35-210(b)(4). In addition to the lack of a transcript of the plea submission hearing and the presentence report in the present case, neither the testimony presented in the sentencing hearing nor the findings of the trial court evince any description of the circumstances of the conviction offenses. *Cf. Gary Alden Bowers*, slip op. at 3 (conducting appellate review despite absence of plea submission hearing transcript, when a sufficient record for review was otherwise provided). As such, nothing in the record informs this court of the nature and circumstances of the defendant's offenses, and lacking that prescribed component, we are unable to conduct a de novo review of the defendant's sentences. *State v. Jimmy Ray Dockery*, No. E2004-00696-CCA-R3-CD, slip op. at 2 (Tenn. Crim. App., Knoxville, Nov. 30, 2004) ("In the present case, we are hampered in conducting our prescribed de novo review of the sentencing determination because the defendant failed to include in the appellate record the transcript of the plea submission hearing."). The burden is upon the defendant, as the appellant, to present "a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal." Tenn. R. App. P. 24(b). In the absence of a full and

complete record revealing the issues that form the bases for the appeal, we must presume the correctness of the trial court's determination. *State v. Ivy*, 868 S.W.2d 724, 728 (Tenn. Crim. App. 1993); *State v. Oody*, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991).

This rule mandates our course in the present case, and accordingly, we affirm the judgments of the trial court.

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JAMES CURWOOD WITT, JR., JUDGE